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Telephone Number Portability

COMMENTS

I. THE COMMISSION SHOULD RECONSIDER ITS LNP PBX SURCHARGES

BellSouth requested that the Commission reconsider this rule because it artificially inflates the

³ *Id.* ¶ 145.

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charges end-users will bear, and will artificially discourage a multiline business customer's selection of both service and service provider.⁴

Other incumbent LECs petitioned the Commission for reconsideration of the rule, and the Commission should grant the pending petitions on this issue.⁵ Each petition demonstrates that the Commission was correct to follow its precedent in establishing a Centrex to PBX line equivalency ratio (9:1). Each petition then goes on to show that the Commission made a mistake in applying this ratio in the Centrex to PBX rate level relationship so as to require multiple charges to be assessed on PBX customers (1:9 as opposed to 1/9:1). Such multiple charges will have adverse affects on the affected service and on service providers.

Ameritech notes that multiple PBX charges could "artificially encourage customers to opt for key systems that use single line business lines" as opposed to PBX systems, and could cause customers "to choose services offered by CLECs that are not required to assess excessive monthly number-portability charges to these services."⁶ Similarly, US West states that, given the nature of the current costing and pricing of PBX trunks as well as the fierce competition for their business, a multiple line surcharge for PBX trunks will "undoubtedly drive PBX customers away from LECs."⁷ Because LEC LNP costs do not increase nine-fold for a PBX subscriber relative to a Centrex subscriber, loading such charges onto PBX customers will result in PBX customers leaving LECs for competitors "simply to avoid the continuing irritation of being a 'deep pocket'".

⁴ BellSouth Petition for Reconsideration, *passim*.

⁵ Petition for Reconsideration of US WEST, Inc (US West) at 3-7; SBC Communications Inc. Petition for Clarification and Reconsideration (SBC) at 2-4; Petition for Expedited Reconsideration and Clarification of Ameritech (Ameritech) at 8-11; Bell Atlantic Petition for Reconsideration (Bell Atlantic) at 2.

⁶ Ameritech at 8-9.

⁷ US West at 5.

for recovery of costs.”⁸ Ameritech notes that the current Commission trunk equivalency formula has been incorporated into its billing system.⁹ The Commission’s decision requiring LECs to bill nine times the business line rate will require 5000 hours of design and programming time to change existing billing systems, and creates opportunity for billing errors and customer confusion.¹⁰

SBC states the problem succinctly:

By reversing the algorithm developed as part of the Access Charge Reform proceeding, the Commission has incorrectly stated the precept that formed the basis in that proceeding for its conclusion on the assessment of charges for PBX trunks and Centrex/Plexar stations.¹¹

As Bell Atlantic correctly notes, while the ratio is the same, the level of charges is very different.¹² US West states that while the Commission sought to create a similar type of equivalency between Centrex and PBX trunk subscribers, “it has turned the Centrex/PBX trunk 9:1 ratio on its head in the current LNP end-user surcharge context.”¹³ The Commission should either allow LECs the flexibility to establish a reasonable assignment of costs to Centrex and

⁸ *Id.* at 6.

⁹ Ameritech at 10.

¹⁰ *Id.* at 11.

¹¹ SBC at 4.

¹² Bell Atlantic at 2. The charge applicable to PRI ISDN is consistent with the approach in the PICC proceeding (namely, five times the 1FB charge). However, and as illustrated in the table set forth in BellSouth’s Petition at p.3, Bell Atlantic correctly notes that “the Commission’s change to nine charges and one charge (from one and one-ninth) also destroyed the relationship the Commission had established with PRI ISDN lines, which bear five PICCs. Now instead of an ISDN line’s carrying five times the burden of a PBX line, it now carries only five-ninths as much.” Bell Atlantic at n.5.

¹³ U S West at 4.

PBX services,¹⁴ or, in the alternative, permit LECs to impose one end-user charge per PBX trunk and one end-user charge per nine Centrex trunks.¹⁵

II. THE COMMISSION SHOULD RECONSIDER ITS DETERMINATIONS REGARDING OVERHEAD COSTS

A. Monthly Number Portability Charge

Restrictions imposed by the Commission on the recovery of LNP costs apply only to incumbent LECs and not to their competitors.¹⁶ As such, these restrictions cannot be said to be presumptively “competitively neutral.” BellSouth agrees with Ameritech’s observation that when such restrictions prevent incumbent LECs from having a reasonable opportunity to recover all of their relevant LNP costs, they are not competitively neutral. The Commission should therefore grant SBC’s request for reconsideration of its decision to exclude general overhead factors in calculating the monthly end-user LNP charge.¹⁷ In the meantime, the Commission or the Bureau, acting on delegated authority, should immediately grant Ameritech’s request for clarification that the *LNP Cost Recovery Order*’s exclusion of general overhead factors does not preclude the use of allocation factors to identify the incremental overhead costs of LNP.¹⁸

¹⁴ *Id.* at 7.

¹⁵ *Id.*; SBC at 4; Bell Atlantic at 2; Ameritech at 8.

¹⁶ Ameritech at 2.

¹⁷ SBC at 4-7.

¹⁸ Ameritech at 4-7. Like Ameritech, BellSouth does not intend to use a general overhead loading factor in developing its LNP monthly charge if the Commission does not grant SBC’s petition. However, BellSouth does intend to capture all of its incremental overhead costs pursuant to its own regular accounting procedures. BellSouth agrees with Ameritech that the *LNP Cost Recovery Order* expressly permits recovery of all incremental overhead costs and that the methodology Ameritech uses is an acceptable way to capture those costs.

SBC demonstrates that the Commission's treatment of general overhead costs in calculating the monthly end-user charge contradicts Commission precedent.¹⁹ As SBC explains, LNP is a new service offering under price cap regulation and not a restructured service of another offering.²⁰ Thus, the LNP offering is distinguished from the restructuring of the 800 NXX service where the cost methodology employed to determine appropriate rates for the original service offering included general overhead loadings, but the methodology used on the subsequent restructuring included only incremental increases to the original loadings.²¹ Allowing only incremental overheads on the initial LNP new service offering thus understates the true costs of providing LNP.²²

As the Commission reconsiders this issue, it should act immediately to grant Ameritech's request for clarification. If incumbent LECs are prevented from determining their true incremental overhead costs, they will be faced with a significant under-recovery problem. This is because, as Ameritech notes:

The problem is that it is not feasible or economical to specifically capture all incremental overhead costs that are in fact caused by LNP, since the impact of LNP cuts across literally thousands of functional groups that support other services. As a result, it is not feasible to directly account for each such function, nor is it possible to determine which activity may have caused a specific increase in its cost without the use of factors.²³

The best way to correct this problem is to treat the LNP new service offering consistent with prior Commission precedent, and allow the use of a general overhead factor in

¹⁹ SBC at 5.

²⁰ *Id.* at 6.

²¹ *Id.* at 5.

²² *Id.* at 6.

²³ Ameritech at 5.

calculating the monthly end-user charge. In the meantime, the Commission should clarify that the use of allocation factors are appropriate in determining the allowable incremental costs of LNP to be recovered.

B. Query Service

As both Bell Atlantic and US West note, the rationale for excluding general overhead factors from the monthly number portability charge does not extend to LNP query services offered by LECs.²⁴ Bell Atlantic shows that section 251(e)(2) is concerned with the costs of “establishing” number portability, but the query services developed by incumbent LECs are on-going services that use various components of LEC networks much like ordinary access services.²⁵ The Commission has not articulated how a double cost recovery could occur in the event a LEC is permitted to incorporate overhead loadings into its tariffed query charge.²⁶ A Commission rule or policy that prevents the use of general overhead factors to price incumbent LEC query services is inconsistent with Commission precedent.²⁷ In any event, such services are not monopoly services provided only by incumbent LECs; the Commission’s rules require the N-1 carrier to perform the query, and these carriers have their own databases or may contract with companies other than incumbent LECs to provide query services.²⁸ Carriers should be free to capture the overhead costs attributable to those services in any reasonable manner.

²⁴ Bell Atlantic at 4; US West at 8. *accord* Ameritech at 7-8.

²⁵ Bell Atlantic at 4.

²⁶ US West at 8-9.

²⁷ Ameritech at 7.

²⁸ Bell Atlantic at 4.

III. CONGRESS HAS GIVEN THE COMMISSION SPECIFIC AUTHORITY TO ESTABLISH THE MONTHLY END-USER CHARGE

The New York Department of Public Service (DPS) argues that the actions taken by the Commission, and specifically those in connection with the monthly LNP end-user charge, unlawfully preempt state jurisdiction over number portability cost recovery.²⁹ The Commission's rule is lawful as it applies to the costs of establishing a long-term database method of number portability as required by the Communications Act.³⁰

In its *First Report and Order* the Commission determined that the 1996 Act "sets forth the standard for recovery of number portability costs and grants the Commission the express authority to implement this standard."³¹ The Commission found this authority in section 251(e)(2), which the United States Court of Appeals for the Eighth Circuit has thrice referred to as an express Congressional call for Commission involvement.³² NYDPS has not offered a persuasive argument as to why the Commission's determination that an optional and temporary

²⁹ New York DPS Petition for Reconsideration, *passim*. NYDPS states that "the Commission authorizes recovery of all number portability costs through a surcharge on end-users." *Id.* at 7. The New York DPS nowhere acknowledge that the mechanism is optional, temporary, and applicable (with attendant limitations that do *not* permit the recovery of *all* number portability costs, *see* Section II above) only to incumbent LECs.

³⁰ 47 U.S.C. §§ 153(3), 251(b)(2).

³¹ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8417 (1996) at ¶ 126. In this order, the Commission erroneously concluded that it had the authority to adopt federal pricing guidelines for remote call forwarding (RCF) and direct inward dialing (DID), interim number portability. *Id.* at ¶ 127. Because RCF and DID are intrastate local exchange services that do not meet the definition of LNP as set forth in the Communications Act because they do not satisfy the LNP performance criteria established by the Commission, BellSouth has petitioned the Commission to reconsider its exercise of federal pricing authority under § 251(e)(2) over RCF and DID.

³² *California v. FCC*, 124 F.3d 934, 939 (8th Cir. 1997); *Iowa Utilities Board v. FCC*, 120 F.3d 753, 794 n.10, 802 n.23 (8th Cir. 1997) *cert. granted*, 118 S.Ct. 879 (1998).

monthly end-user charge, as applied to an incumbent LEC's establishment of permanent LNP pursuant to Congress's mandate, is not fully consistent with the scope of authority granted under section 251(e)(2).

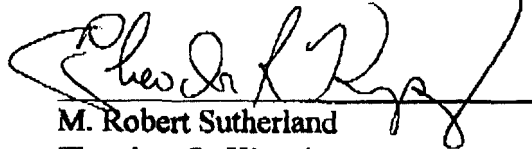
CONCLUSION

The Commission should reconsider its requirements that incumbent LECs assess nine (9) monthly number-portability end-user charges per PBX trunk, and that general overhead factors be excluded in calculating the LNP monthly end-user charge and query service charge. Section 251(e)(2) of the Communications Act provides the Commission with authority to establish a temporary LNP monthly end-user charge so that incumbent LECs may recover their costs of establishing permanent number portability.

Respectfully submitted,

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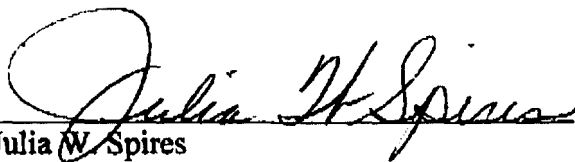
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September 3, 1998

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of September 1998, serviced all parties to this action with the foregoing COMMENTS, reference Docket No. CC 95-116, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.


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